

§ 8.52

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer, and

(2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 8.52 lists practices that result in exclusion. Section 8.53 lists practices not resulting in exclusion. Section 8.54 lists the criteria used for determining whether other practices can put retailer independence at risk.

§ 8.52 Practices which result in exclusion.

The practices specified in this section result in exclusion under section 105(a) of the Act. The practices specified here are examples and do not constitute a complete list of such practices:

(a) Purchases of distilled spirits, wine or malt beverages by a retailer as a result, directly or indirectly, of a threat or act of physical or economic harm by the selling industry member.

(b) Contracts between an industry member and a retailer which require the retailer to purchase distilled spirits, wine, or malt beverages from that industry member and expressly restrict the retailer from purchasing, in whole or in part, such products from another industry member.

§ 8.53 Practice not resulting in exclusion.

The practice specified in this section is deemed not to result in exclusion under section 105(a) of the Act: a supply contract for one year or less between the industry member and retailer under which the industry member agrees to sell distilled spirits, wine, or malt beverages to the retailer on an "as needed" basis provided that the retailer is not required to purchase any minimum quantity of such product.

§ 8.54 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular prac-

27 CFR Ch. I (4–1–12 Edition)

tice, other than those in §§ 8.52 and 8.53, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 9—AMERICAN VITICULTURAL AREAS

Sec.

9.0 Scope.

Subpart A—General Provisions

9.1 Definitions.

9.2 Territorial extent.

9.3 Delegations of the Administrator.

Subpart B—AVA Petitions

9.11 Submission of AVA petitions.

9.12 AVA petition requirements.

9.13 Initial processing of AVA petitions.

9.14 AVA rulemaking process.

Subpart C—Approved American Viticultural Areas

9.21 General.

9.22 Augusta.

9.23 Napa Valley.

9.24 Chalone.